Sathiyamurthi v Penguasa/Komandan, Pusat Pemulihan Karangan, Kedah

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPEAL NO 05–41 OF 2005(P)
ABDUL HAMID MOHAMAD, ARIFIN ZAKARIA AND AUGUSTINE PAUL FCJJ
15 AUGUST 2006

Criminal Procedure — Habeas corpus — Detention of drug dependant — Whether previous history of drug dependant should be revealed to magistrate in recommendation of rehabilitation officer — Drug Dependants (Treatment and Rehabilitation) Act 1983 s 6(1)(a)

Criminal Procedure — Habeas corpus — Detention of drug dependant — Whether report of medical officer ought to be served on appellant — Whether s 399 of Criminal Procedure Code applied to proceeding by magistrate in ordering drug dependant to undergo treatment and rehabilitation at rehabilitation centre — Criminal Procedure Code s 399 — Drug Dependants (Treatment and Rehabilitation) Act 1983 s 6(1)(a)

The learned magistrate had ordered the appellant to undergo treatment and rehabilitation at the Pusat Pemulihan Karangan, Kedah for a period of two years under s 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act'). Before making the order the learned magistrate had considered the report of the medical officer and the recommendation of the rehabilitation officer. The appellant then filed a writ of habeas corpus in the High Court seeking his release. The application was dismissed by the High Court and the appellant appealed. The issues before the court were: (1) whether the report of the medical officer ought to have been served on the appellant pursuant to s 399 of the Criminal Procedure Code ('the CPC'), ie whether s 399 applied to a proceeding by a magistrate in ordering a drug dependant to undergo treatment and rehabilitation at a rehabilitation centre pursuant to s 6(1)(a) of the Act; and (2) whether the previous history of a drug dependant should be revealed to the magistrate in the recommendation of the rehabilitation officer in such a proceeding. The learned deputy public prosecutor submitted that s 399(1) applied to only inquiries conducted under the CPC.

Held, dismissing the appeal:

(1) Section 399(1) applies to only inquiries, trials or other proceedings under the CPC. The inquiry conducted by the magistrate pursuant to s 6(1) of the Act is one conducted under the provisions of the Act and not the CPC. Section 399(1) thus has no application to such an inquiry (see para 17).

(2) Under the law as it now stands, the magistrate acts on the recommendation of the rehabilitation officer. It is the duty of the magistrate to ensure that the recommendation of the rehabilitation officer is justified in order to enable him to weigh it with the representation, if any, of the person against whom the order is sought to be made. Thus, the repeal of s 6(4) of the Act as enacted does not alter the duty of the rehabilitation officer to provide relevant information to the magistrate in support of his recommendation. It must, however, be observed that it is the absence of the previous history of a person in the recommendation of the rehabilitation officer that must be the subject matter of complaint, and not its presence (see para 20).

[Bahasa Malaysia summary

Yang arif majistret telah memerintahkan perayu untuk menjalani rawatan dan pemulihan di Pusat Pemulihan Karangan, Kedah untuk tempoh masa selama dua tahun di bawah s 6(1)(a) Akta Penagih Dadah (Rawatan dan Pemulihan) 1983 ('Akta tersebut'). Sebelum membuat perintah tersebut, yang arif majistret telah mempertimbangkan laporan pegawai kesihatan dan cadangan pegawai pemulihan. Perayu kemudiannya memfailkan satu writ habeas corpus di Mahkamah Tinggi memohon agar dia dibebaskan. Permohonan tersebut ditolak oleh Mahkamah Tinggi dan perayu merayu. Isu-isu di hadapan mahkamah adalah: (1) sama ada laporan pegawai kesihatan patut diserahkan ke atas perayu di bawah s 399 Kanun Acara Jenayah ('KAJ'), iaitu sama ada s 399 terpakai kepada prosiding oleh majistret memerintahkan seorang penagih dadah untuk menjalani rawatan dan pemulihan di satu pusat pemulihan s 6(1)(a) Akta tersebut; dan (2) sama ada sejarah lalu seorang penagih dadah patut didedahkan kepada majistret dalam cadangan pegawai pemulihan di dalam prosiding sedemikian. Yang arif timbalan pendakwa raya menghujahkan bahawa s 399(1) terpakai hanya kepada siasatan-siasatan yang dilakukan di bawah KAJ.

Diputuskan, menolak rayuan:

(1) Seksyen 399(1) terpakai kepada siasatan-siasatan, perbicaraan-perbicaraan atau prosiding-prosiding lain di bawah KAJ. Siasatan yang dibuat oleh majistret di bawah s 6(1) Akta tersebut adalah satu siasatan yang dibuat di bawah peruntukan Akta tersebut dan bukannya KAJ. Seksyen 399(1) dengan itu adalah tidak terpakai untuk siasatan tersebut (lihat perenggan 17).

(2) Di bawah undang-undang yang sedia ada, majistret bertindak pada cadangan pegawai pemulihan. Ianya adalah tugas majistret untuk memastikan bahawa cadangan pegawai pemulihan mempunyai justifikasi agar beliau dapat mempertimbangkannya dengan representasi, jika ada, yang dibuat oleh mereka yang mana perintah itu dipohon terhadapnya. Maka s 6(4) Akta tersebut yang dipinda sebagaimana yang digubal tidak mengubah tugas pegawai pemulihan untuk memberi maklumat yang relevan kepada majistret dalam menyokong cadangannya. Namun begitu, ianya perlu diperhatikan bahawa ketiadaan sejarah silam seseorang di dalam cadangan pegawai pemulihan yang mesti menjadi perkara subjek aduan, dan bukannya adanya sejarah silam tersebut (lihat perenggan 20).]

Notes

For cases on habeas corpus, detention of drug dependant, see 5(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 1913–1937.

Cases referred to

Ang Gin Lee v PP [1991] 1 MLJ 498 (refd)
Carnochan, Re (1941) SCR 470 (refd)
Gibson, Re (1907) 15 OLR 245 (refd)
Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia [1969] 2 MLJ 129 (refd)
King, Re (1916) 30 DLR 599 (refd)
PP v Ottavio Quattrocchi [2003] 1 MLJ 225
Prithipal Singh v Datuk Bandar, Kuala Lumpur (Golden Arches Restaurant Sdn Bhd, Intervener) [1993] 3 MLJ 336 (refd)
R v Home Secretary, Ex parte Greene [1941] 3 All ER 104 (refd)
Rajasegaran v Pusat Pemulihan Serenti Raub & Anor [2000] 3 MLJ 529 (refd)
Shuttleworth, Re (1846) 9 QB 651 (refd)
Tan Boon Liat, Re [1977] 2 MLJ 108 (refd)

Legislation referred to

Courts of Judicature Act 1964
Criminal Procedure Code s 399(1)
Drug Dependants (Treatment and Rehabilitation) Act 1983 s 6(1)(a), (b), (3), (4)
Drug Dependants (Treatment and Rehabilitation) (Amendment) Act 1998

Appeal from: Criminal Application No 44–6 of 2005 (High Court, Pulau Pinang)

RSN Rayer (Rafael Prabakaran Abdullah with him) (R Nethaji Rayer & Co) for the appellant.
Najib Zakaria (Legal Advisory Office,Ministry of Internal Secutiry) for the respondents.

Augustine Paul FCJ (delivering judgment fo the court):

[1] The issues that arose for consideration in this appeal were the applicability of s 399(1) of the Criminal Procedure Code ('s 399(1)') to a proceeding by a magistrate in ordering a drug dependant to undergo treatment and rehabilitation at a rehabilitation centre pursuant to s 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act') and whether the previous history of a drug dependant should be revealed to the magistrate in the recommendation of the rehabilitation officer in such a proceeding.

[2] On 21 October 2004, the learned Magistrate, Magistrates Court, Georgetown, Pulau Pinang ordered the appellant to undergo treatment and rehabilitation at the Pusat Pemulihan Karangan, Kedah for a period of two years under s 6(1)(a) of the Act. Before making the order the learned Magistrate considered the report of the medical officer and the recommendation of the rehabilitation officer. The material parts of the medical report read as follows:

Saya Dr Latifah bt Ishahak @ Ishak, Pegawai Perubatan, Klinik Kesihatan Hospital Pulau Pinang Seorang * Pegawai Perubatan Kerajaan/pengamal perubatan berdaftar, setelah menjalankan ujian-ujian yang perlu keatas Sathiyamurthi A/L Arokiadass Anthony Kad Pengenalan No: 500406-07-5565 Berumur 54 Tahun yang beralamat di Blok 19-4-2, Lorong Batu Bukit, Tg. Tokong, Pg memperakui bahawa dia * ialah / bukanlah seorang penagih dadah mengikut pengertian Akta ** Dadah/dadah-dadah berbahaya yang digunakan yang menyebabkan dia menjadi penagih dadah ialah MORPHINE

Tarikh: 5 OCT 2004

[3] The material parts of the recommendation of the rehabilitation officer read as follows:

2. SEJARAH PENGGUNAAN DADAH

2.1 Jenis Dadah: Morfin (chase) Sekali sehari

2.2 Lama Menggunakan Dadah: Sejak 1975 (morfin) / terlibat semula sehari

3. REKOD PEMULIHAN

Bil	Jenis Pemulihan	Tempat	Tempoh
1	Sek 6(1)(b) APD	Pejabat Pemulihan Dadah, Daerah Timur Laut, Pulau Pinang	21.08.89-20.08.91
2	Sek 6(1)(b) APD	Pejabat A.D.K., Daerah Timur Laut, Pulau Pinang	25.02.99- 24.02.01
3	Sek 6(1)(a) APD	Pusat Serenti Batu Kurau	05.06.01- 02.07.02

4. SYOR PEGAWAI PEMULIHAN DADAH

Penama berumur 54 tahun, telah berkahwin dan belum mempunyai anak lagi. Isterinya bekerja sebagai pekerja pembersihan dengan pendapatan RM600 sebulan. Beliau merupakan anak ketiga dari empat orang adik-beradik. Kedua-dua ibubapa penama telah meninggal dunia. Beliau kini tinggal bersama isterinya di rumah sewanya di Tanjung Tokong, Pulau Pinang.

Penama menerima pendidikan setakat tamat darjah 6 dan kini bekerja sebagai pengawal keselamatan dengan pendapatan RM1,000 sebulan.

Beliau mengaku terlibat semula dengan pengambilan dadah jenis morfin selama sehari dengan kekerapan sekali sehari. Menurut penama, beliau mula mengambil dadah jenis yang sama pada 1975 dan pernah diletakkan di bawah pengawasan Pejabat Agensi Dadah Kebangsaan, Daerah Timur Laut, Pulau Pinang dari 25.2.99 hingga 24.2.2001 sebelum dimasukkan ke Pusat Serenti Batu Kurau pada 2001. Sepanjang tempoh pengawasan selepas pembebasannya dari pusat, penama kurang respon dan pernah dituduh langgar syarat pengawasan kerana terlibat semula dengan dadah. Selain dari itu, penama juga mengaku pernah dipenjarakan sebanyak 5 kali lagi kerana kesalahan memiliki dadah.

Memandangkan penglibatan penama dengan dadah telah lama dan masih tidak menampakkan kesungguhannya untuk berhenti darinya, maka disyorkan penama dihantar semula ke pusat serenti untuk pemulihan di bawah s 6(1)(a) Akta Penagih Dadah (R & P) 1983 (Pindaan) 1998.

On 18 January 2005, the appellant filed a writ of habeas corpus in the High Court at Penang seeking his release. The application was dismissed by the High Court on 9 May 2005. This appeal is by the appellant.

[4] Before us, learned counsel for the appellant rested his case on two issues only. They are:

(a) whether s 399 applies to an inquiry conducted by a Magistrate in making an order under s 6(1) of the Act; and

(b) whether the previous history of the Appellant should be revealed to the Magistrate in the recommendation of the rehabilitation officer.

[5] In order to appreciate the arguments of learned counsel and the reply by the learned Deputy Public Prosecutor it is necessary to consider s 6(1) of the Act as originally enacted in 1983 and as amended by the Drug Dependants (Treatment and Rehabilitation) (Amendment) Act 1998.

[6] Section 6(1) of the Act as originally enacted reads as follows:

> 6(1) Where a person who has undergone the tests referred to in section 3 or 4, and, in consequence of such test, is certified by a government medical officer or a registered medical practitioner to be a drug dependant, the officer shall produce him, or cause him to appear before a Magistrate and if the Magistrate, after giving such person an opportunity to make representations —
>
> (a) is satisfied that such person requires to undergo treatment and rehabilitation at a rehabilitation centre, order such person to reside at such Centre for a period of two years to undergo treatment and rehabilitation and thereafter to undergo after-care in accordance with the provisions of this Act relating thereto; or
>
> (b) is satisfied that such person's treatment and rehabilitation may be carried out otherwise than at a rehabilitation centre, he may order such person to be placed under the supervision of a rehabilitation officer for a period of not less than two and not more than three years, and to execute a bond with or without sureties, as the Magistrate may determine, to remain under such supervision for such period.
>
> Provided that where such person fails to execute such bond an order under paragraph (a) shall be made against him by the Magistrate.
>
> (2) An order of supervision under paragraph (b) of subsection (1) shall contain the condition requiring such person to abstain from dangerous drugs and may contain conditions as to residence, employment, associations, abstention from intoxicating liquor, or attendance at a Day Centre.
>
> (3) The Magistrate shall, before making an order either under paragraph (a) or (b) of subsection (1), consider a report by a rehabilitation officer on such person, a copy of which shall be supplied to such person, and which shall be read out and explained to him.
>
> (4) In making an order under subsection (1), the Magistrate shall have regard to the circumstances of the case, and the character, antecedents, age, health, education, employment, family and other circumstances of the person against whom the order is proposed to be made.
>
> (5) A certificate under subsection (1) purporting to be signed by a government medical officer or a registered medical practitioner shall be receivable by a Magistrate without proof of the signature thereon, and the Magistrate shall accept it as proof of its contents, unless the contrary is proved.

[7] Section 6(1) of the Act as amended which is now in force reads as follows:

> 6(1) Where a person who has undergone the tests referred to in section 3 or 4 and, in consequence of such tests, is certified by a government medical officer or a registered medical practitioner to be a drug dependant, the officer shall produce him, or cause him to appear before a Magistrate, and the Magistrate shall upon the recommendation of a rehabilitation officer and after giving such person an opportunity to make representations —
>
> (a) order such person to undergo treatment at a rehabilitation centre specified in the order for a period of two years and thereafter to undergo supervision by an officer at the place specified in the order for a period of two years; or
>
> (b) order such person to undergo supervision by an officer at the place specified in the order for a period of not less than two and not more than three years.
>
> (2) An order of supervision imposed on a person under paragraphs (a) and (b) of subsection (1) shall contain the following conditions:
>
> (a) the person must reside in a State or Federal Territory or any area as specified in the order;
>
> (b) the person must not leave the area where he resides without the written permission of the Director General;
>
> (c) at the time specified in the order, the person shall report at the nearest police station or for a member of the armed forces at the place specified by an officer;
>
> (d) the person shall not consume, use or possess any dangerous drugs;
>
> (e) the person shall undergo such tests at such time and place as may be ordered by an officer; and
>
> (f) the person shall undergo any programme for the rehabilitation of drug dependants held by the Government.
>
> (3) Any person undergoing supervision under paragraph (a) or (b) of subsection (1) who fails to comply with any condition imposed under subsection (2) shall be guilty of an offence and shall on conviction be liable to be punished with imprisonment for a period not exceeding three years or to whipping not exceeding three strokes or to both.

[8] The paramount consideration in an application for a writ of habeas corpus by a person against whom a rehabilitation order has been made is whether there is justification for the making of the order. It has been said that sometimes the court may exercise its inherent jurisdiction to ignore a defect in a detention order where it appears that the detenu is a person who, on the merits, ought to be detained (see *The Law of Habeas Corpus* by RJ Sharpe (2nd Ed) at p 57). This may arise in cases where the order made is one that is in the interests of society in general, and, the person concerned in particular. This line of thinking is illustrated by cases involving persons confined on account of mental disorder. As Lord Denman CJ said in *Re Shuttleworth* (1846) 9 QB 651 at p 662:

> If the court thought that a party, unlawfully received or detained, was a lunatic, we should still be betraying the common duties of members of society if we directed a discharge. But we have no power to set aside the order, only to discharge. And should we, as Judges, or individuals, be justified in setting such a party at large? It is answered that there may be a fresh custody. But why so? Is it not better, if she be dangerous, that she should remain in

custody till the Great Seal or the commissioners act? Therefore, being satisfied in my own mind that there would be danger in setting her at large, I am bound by the most general principles to abstain from so doing; and I should be abusing the name of liberty if I were to take off a restraint for which those who are most interested in the party ought to be the most thankful.

[9] In Canada where a similar approach has been adopted, it has been held that the appropriate procedure to be followed is to direct the trial of an issue as to the patient's propensity to be dangerous (see *Re Gibson* (1907) 15 OLR 245; *Re King* (1916) 30 DLR 599; *Re Bowyer* (1930) 66 OLR 378 and *Re Carnochan* (1941) SCR 470). Similarly, it would be an injustice to society and to the drug dependant himself if he is discharged from the rehabilitation centre on technical grounds without any concern for his treatment. The question of whether this objective can be a matter for consideration in a writ of habeas corpus by a person against whom a rehabilitation order has been made would depend on the circumstances in which the order can be challenged.

[10] In order to answer this question, it is first necessary to ascertain the instances when a writ of habeas corpus will be issued. In *Re Tan Boon Liat* [1977] 2 MLJ 108, Lee Hun Hoe CJ (Borneo) said at pp 110–111:

> In *The Reverend Thomas Pelham Dale's Case* (1881) 6 QBD 376, 461, 469 and 470 Brett LJ observed at p 461 that:
>
> > Then comes the question upon the habeas corpus. It is a general rule, which has always been acted upon by the Courts of England, that if any person procures the imprisonment of another he must take care to do so by steps, all of which are entirely regular, and that if he fails to follow every step in the process with extreme regularity the court will not allow the imprisonment to continue.
>
> Cotton LJ in supporting this stated at p 469:
>
> > I quite agree with Brett LJ, that when persons take upon themselves to cause another to be imprisoned, they must strictly follow the powers under which they are assuming to act, and if they do not, the person imprisoned may be discharged, although the particulars in which they have failed to follow those powers may be matters of mere form. Here, however, the departure from the correct procedure is not, in my opinion, a mere matter of form, but is a matter of substance.

[11] Thus, in a writ of habeas corpus, the question for the court to determine is whether the person is lawfully detained. If he is, the writ cannot be issued and if he is not, it must be issued (see *R v Home Secretary, Ex parte Greene* [1941] 3 All ER 104). The lawfulness of a detention would depend upon whether the breach complained of is mandatory or directory. A mandatory requirement is one that is of direct relevance to the detention. A breach of it will entitle a person to a writ of habeas corpus without the need to establish prejudice. A breach of a requirement which is directory will not be significant provided that there is substantial compliance and there is no prejudice. In the case of an order made under s 6(1) of the Act the requirements that must be complied with are:

(i) certification by a medical officer that the subject is a drug dependant.

(ii) the recommendation of a rehabilitation officer, and

(iii) the giving of an opportunity to the subject to make representation.

[12] All these three requirements relate to the condition of a person as a drug dependant and are prerequisites to the exercise of power by a magistrate. They are therefore mandatory. The resultant matter for consideration is the extent to which a court may inquire into compliance with these requirements. That would depend on the manner of exercise of powers by a magistrate under s 6(1) of the Act. Where the order is required to be made on the satisfaction of a magistrate the question of whether or not the facts on which the rehabilitation order is made are sufficient or relevant is a matter to be decided solely by the magistrate and cannot be subjected to judicial review (see *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ rder '… if satisfied that such pers129). That in fact was the position in the case of s 6(1) of the Act as originally enacted whereby a magistrate may make an oon requires to undergo treatment and rehabilitation at a rehabilitation centre …'. The test under s 6(1) of the Act as amended is now no longer subjective. It is now objective since the magistrate, under s 6(1) of the Act, '… shall upon the recommendation of a rehabilitation officer … order such person to undergo treatment at a rehabilitation centre …; or order such person to undergo supervision'. It is therefore mandatory for the magistrate to make an order either under s 6(1)(a) or (b) of the Act upon the recommendation of the rehabilitation officer. The existence of grounds upon which a magistrate shall make the order is subject to judicial review as the test is objective. It follows that the grounds upon which an order made by a magistrate under s 6(1) of the Act can be impugned are when there is a failure to comply with the three requirements as set out earlier. Thus the language of s 6(1) of the Act itself contemplates the use of a writ of habeas corpus only for the purpose of challenging the condition of a person as a drug dependant. This satisfies the social requirement of issuing a writ of habeas corpus in cases of this nature. It is perhaps pertinent to add that in *Rajasegaran v Pusat Pemulihan Serenti Raub & Anor* [2000] 3 MLJ 529, the High Court acted under Paragraph 1 of the Schedule to the Courts of Judicature Act 1964 to substitute an order made under s 6(1)(a) of the Act to one under s 6(1)(b) of the Act.

[13] It is now apposite to consider the two objections raised by learned counsel.

(a) Whether s 399(1) applies to an inquiry conducted by the magistrate in making an order under s 6(1) of the Act?

[14] Learned counsel contended that the report of the medical officer ought to have been served on the Appellant pursuant to s 399(1). In reply, the learned Deputy Public Prosecutor referred to the case of *Ang Gin Lee v Public Prosecutor* [1991] 1 MLJ 498 and said that s 399(1) applies to only inquiries conducted under the Criminal Procedure Code.

In the light of the objection raised it is necessary to consider s 399(1). It reads as follows:

> Any document purporting to be a report under the hand of any of the person mentioned in subsection (2) of this section upon any person, matter or thing examined or analysed by

him or any document purporting to be a report under the hand of the Registrar of Criminals upon any matter or thing relating to finger impressions submitted to him for report may be given in evidence in any inquiry, trial or other proceeding under this Code unless such person or Registrar shall be required to attend as a witness —

(a) by the Court; or

(b) by the accused, in which case the accused shall give notice to the Public Prosecutor not less than three clear days before the commencement of the trial:

Provided always that in any case in which the Public Prosecutor intends to give in evidence any such report he shall deliver a copy thereof to the accused not less than ten clear days before the commencement of the trial.

[15] The proceeding conducted under s 6(1) of the Act is no doubt an inquiry. The validity of the objection raised by learned counsel would thus depend on whether this inquiry comes within the scope of s 399(1). The applicability of s 399(1) to a particular proceeding is made patently clear by its explicit language. It states that a report '… may be given in evidence in any inquiry, trial or other proceeding under this Code ….' The words '… or other proceeding …' are followed by the words '… under this Code'. The question for determination is whether this qualification is confined in its operation to just '… or other proceeding …' or also includes '… any inquiry, trial …'. The rule of construction applied in cases such as *Public Prosecutor v Ottavio Quattrocchi* [2003] 1 MLJ 225 and *Prithipal Singh v Datuk Bandar, Kuala Lumpur (Golden Arches Restaurant Sdn Bhd, Intervener)* [1993] 3 MLJ 336 makes it clear that the absence of a comma before the words '… or other proceeding …' means that the words '… under this Code …' must be construed conjunctively as applying to all the three categories of proceedings mentioned. Section 399(1) thus applies to only inquiries, trials or other proceedings under the Criminal Procedure Code. The inquiry conducted by the magistrate pursuant to s 6(1) of the Act is one conducted under the provisions of the Act and not the Criminal Procedure Code. Section 399(1) thus has no application to such an inquiry.

(b) Whether the previous history of the appellant should be revealed to the magistrate in the recommendation of the rehabilitation officer?

[16] The objection of learned counsel to the previous history of the Appellant being revealed to the Magistrate in the recommendation of the rehabilitation officer stems from the repeal of s 6(4) of the Act as enacted pursuant to which the magistrate, in making an order under s 6(1) is to have regard to the circumstances of the case, and the character, antecedents, age, health, education, employment, family and other circumstances of the person against whom the order is proposed to be made. Thus, learned counsel contended, the repeal of this provision means that such information should not be revealed to the magistrate.

[17] It is clear that the recommendation of a rehabilitation officer plays a dominant role in the exercise of powers by a magistrate under s 6(1) of the Act. It is the recommendation of a rehabilitation officer that empowers a magistrate to decide whether to order a person to undergo treatment at a rehabilitation centre under s 6(1)(a) of the Act or to order such person to undergo supervision by an officer

under s 6(1)(b) of the Act. Such a decision cannot be made on a mere recommendation of the rehabilitation officer that a certain order must be made. As *Black's Law Dictionary* (6th Ed) in defining the phrase 'letter of recommendation' says:

> A writing whereby one person certifies concerning another that he is of good character, solvent, possessed of commercial credit, skilled in his trade or profession, or otherwise worthy of trust, aid, or employment. It may be addressed to an individual or to whom it may concern, and is designed to aid the person commended in obtaining credit, employment, etc.

[18] It follows that a recommendation must be supported with reasons. This is necessary as it is only with reasons that a magistrate will be able to decide whether to make the order as recommended, or, under the alternative limb of s 6(1) of the Act. The repeal of s 6(3) and (4) as originally enacted does not alter this requirement. Under the law as it then stood the previous history of a person will be contained in a report of the rehabilitation officer which the magistrate must consider before making the appropriate order after having heard the representation of the person, if any. Under the law as it now stands, the magistrate acts on the recommendation of the rehabilitation officer. It is the duty of the magistrate to ensure that the recommendation of the rehabilitation officer is justified in order to enable him to weigh it with the representation, if any, of the person against whom the order is sought to be made. Thus, the repeal of s 6(4) of the Act as enacted does not alter the duty of the rehabilitation officer to provide relevant information to the magistrate in support of his recommendation. It must, however, be observed that it is the absence of the previous history of a person in the recommendation of the rehabilitation officer that must be the subject-matter of complaint, and not its presence.

[19] The objections raised by learned counsel have a bearing on the right of representation and are therefore relevant. However, they had no merit. In the upshot we dismissed the appeal.

Appeal dismissed.

Reported by Loo Lai Mee